

STREAM ALTERATION VIOLATIONS

Purpose

The purpose of this Fact Sheet is to present the possible repercussions of conducting stream alteration activities without written authorization from the State Engineer's Office and instructions for reporting unauthorized stream alteration activities.

Background

What is a stream alteration violation?

Section 73-3-29 of the Utah Code requires that any person, organization, or governmental agency obtain written authorization from the State Engineer prior to initiating any alterations to the bed or banks of a natural stream channel. Furthermore, authorization from the State Engineer's Office is required if the activity takes place within 2 times the bankfull width of the stream up to a maximum of 30 feet. Therefore, anyone engaging in work within the State Engineer's permitting jurisdiction without a stream alteration permit or other form of written authorization is in violation of Section 73-3-29 and guilty of a crime punishable under Section 73-2-27.

What type of work constitutes a stream alteration? In general, if the work conducted has the potential to adversely affect the natural stream environment, recreational uses of the stream and adjacent areas, aquatic wildlife, channel capacity, or water rights a stream alteration permit will be necessary. Activities such as removal of debris via manual methods, thinning and pruning of native riparian vegetation or

wholesale removal of invasive vegetation (tamarisk, Russian olive, etc.) often can be conducted without authorization by the State Engineer.

Enforcement Regulations

In 2005 the State Engineer obtained greater enforcement authority to correct unauthorized activities falling under Title 73 as codified under Section 73-3-25 and 73-3-26 of the Utah Code. This authority includes violations of Section 73-3-29 for stream alteration activities.

In essence, 73-2-25 (as it pertains to stream alteration activities) allows the State Engineer to commence enforcement action if someone violates an order issued under section 73-3-29 and 73-2-26 allows the State Engineer to levy administrative fines and order corrective action such as restoration of a stream channel to its pre-altered state.

When the State Engineer's Office discovers or is made aware of stream channel alteration violations and the activity cannot be addressed via administrative means, the enforcement authority mentioned above may be utilized.

Reporting Violations

As the State Engineer's staff is limited and is often not able to witness violations throughout the state, reports from adjacent landowners or concerned citizens regarding stream channel alteration violations are essential. Furthermore, due to limitations for investigating alleged unauthorized activities, the State Engineer's Office asks that those reporting violations supply as much information regarding the violation as possible. Failure to supply complete and accurate information severely limits the State Engineer's Office from pursuing corrective action on unauthorized activities.

Violation Referral Form

The attached stream alteration violation referral form is to be used for reporting violations of Section 73-3-29 of the Utah Code to the State Engineer's Office.

Resolution of Violations

Once the State Engineer's Office is made aware of a possible violation of Section 73-3-29, follow-up investigation will attempt to answer the following:

- Impacts to the natural stream environment resulting from the stream alteration activity.
- Impacts to vested water rights.
- Impacts to aquatic wildlife.
- Impacts to channel capacity.
- Compliance of work with State Code.

- Necessary mitigation to make the work compliant with State Code.

Depending on the results of the investigation, the State Engineer's Office, in most cases, will attempt to resolve the violation through administrative means (i.e. After-the-Fact permitting with appropriate mitigation). For those who think that this policy makes it easier to obtain forgiveness than to ask for permission, in almost all cases this is untrue. It is very uncommon for unauthorized stream alteration activities to be completely compliant with State Code and mitigation work is almost always required. This inevitably results in greater costs to the violator than if he or she had obtained a stream alteration permit for the work prior to beginning.

Should the nature of the work be totally unacceptable and After-the-Fact permitting is not possible or the violator is uncooperative, the State Engineer's Office may elect to resolve the situation through the enforcement regulations mentioned previously.

Those reporting violations should keep in mind that resolution of the violation through the State Engineer's Office may not and most frequently does not result in compensation or repairs to damage of adjacent private property. The State Engineer only has the ability to require corrective action for damages to the natural stream environment, vested water rights, channel capacity, or aquatic wildlife. Persons or properties that have been damaged by authorized or unauthorized activity should seek civil action alternatives.

STREAM ALTERATION VIOLATION REFERRAL

Complete this form by entering the requested information in the blanks provided.

Stream/watercourse that has been altered

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Address of stream alteration

PLS Description of stream alteration location

Section	
Township	
Range	
Base & Meridian	

Description of stream alteration activities. If photographs are available please attach to this referral form.

Equipment used to conduct stream alteration activity (e.g. bobcat, backhoe, etc.)

Dates that stream alteration activity occurred

Beginning date		Ending date	
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Name of alleged violator

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Address of alleged violator

Telephone number of alleged violator

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Please attach any supporting information regarding the violation to this form such as location map, plan and cross-sectional drawings, and photographs.

You must provide the following information before the Division of Water Rights will investigate this referral.

Your name

Your address

Your telephone number

Signature

Date

Please return this form to:

Utah Division of Water Rights
Attn: Judy Mattson
1594 West North Temple, Suite 220
Salt Lake City, UT 84114

Or fax to:

(801) 538-7442

